IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Criminal Appeal No.457 of 1999.

Date of decision: 03.03.2006.

State of H.P. **….Appellant**

Versus

Onkar Chand & Others **…..Respondents**

Coram

The Hon'ble Mr.Justice K C Sood,J.

Whether approved for reporting ?[1]

For the Appellant: Mr.Ashok Chaudhary, Additional Advocate General.

For the Respondent:Mr.Lovnesh Kanwar, Advocate.

K C SOOD,J.(Oral).

This appeal is directed against the judgment of acquittal recorded by the learned Additional Chief Judicial Magistrate, Hamirpur, dated 3rd June, 1999.

It appears, the respondents, hereinafter referred to as the "accused", were tried for offences punishable under Sections 341, 323, 325 and 447 read with Section 34 of the Indian Penal Code.

The prosecution case:

On 2nd December, 1994 at about 7.30 A.M. complainant was standing near his cowshed. His father Garib Dass had gone to ease himself, when accused Pohlo Ram, Onkar Chand and Beer Kumar, armed with *dandas*, came near their house and started beating the complainant. They also threatened to kill his

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

father. In the meanwhile, his father came, who tried to intervene, but he was also beaten with *dandas*. Complainant and his father received injuries who were medically examined. Garib Dass is found to have sustained, in addition to simple injury, one grievous injury i.e. fracture of lateral end of clavicle part.

It is admitted position that there was dispute between the parties about the boundaries of their respective lands which are adjacent to each other.

It is not in dispute that the accused also received injuries in the scuffle with complainant party. The injuries on the person of the accused have not been explained. Even though the case against the complainant was also registered, but that has not seen the light of the day. From the evidence on record, it is made out that there was free fight between two parties in which both the parties sustained injuries and the injuries on person of the accused has not been explained. There is nothing on record to show that accused were the aggressor.

The acquittal recorded by the learned trial Magistrate cannot be said to be perverse or dehors the evidence on record.

No interference is called for.

The appeal is dismissed.

March 3, 2006 **(K C Sood)**
(aks) **Judge**